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Water Market Reform Division
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Sent Via Electronic Mail

NIC submission on Water Markets Intermediaries Code and Statutory Trust Accounts Policy Position Paper

Thank you for the opportunity to provide input into the Water Markets Intermediaries Code and Statutory Trust Accounts Policy Position Paper as part of the Water Reform Roadmap.

NIC acknowledges the commitment of the Water Market Reform team to consider the feedback throughout the multiphase engagement. Whilst the process is resource intensive for stakeholders, the opportunity for engagement and feedback is critical to shape the detail of the water market reforms laid out by the Water Markets Roadmap and the Restoring our Rivers Act 2023, and ensure it is fit for purpose and focused on the overall reform objectives.

NIC and many other stakeholders, are increasingly concerned by the regulatory burden of this reform, particularly given its scale and pace. We are also concerned that the reform is going too far, and is becoming disproportionate to the problem at hand, and the size and extent of water markets. While market integrity, transparency and good governance are important – there is enormous risk of not striking the right balance for a proportionate policy response – particularly given the cost to comply and the assessment of the potential negative consequences. Under current proposals, these regulatory costs (set to be borne by both taxpayers and water users), as well as regulatory burdens, appear to far outweigh the benefits.

As the Office of Impact Assessment states:

“Impact analysis helps policymakers consider how proposals affect businesses, individuals and community organisations, as well as broader economic and other impacts.

Strong evidence-based impact analysis is a powerful tool when applied intentionally and consistently. The Australian Government’s Policy Impact Analysis Framework ensures that decision makers are supported with the necessary evidence base, and that policy options are well-designed, well-targeted and fit-for-purpose.”¹

We strongly recommend that a final cost benefit analysis is completed prior to finalisation of the regulations (this one, as well as the collective suite of regulations that make up this reform) to provide the evidence base to ensure the final reform is proportionate, well-designed, well-targeted and fit for purpose.

We therefore offer the following specific feedback regarding the Water Markets Intermediaries Code and Statutory Trust Accounts Policy Position Paper, noting our overarching concerns with regulatory burden for the team to consider.

Code application:

NIC supports the new exemption from prohibition rules for IIOs who provide intermediary services, we also suggest more clarity must be provided to whom the code applies. One area of confusion is with IIOs who do not charge a fee for their services of matching or facilitating trades, and whether these IIOs are exempt from the code. If they are, then it should be explicit in a clear exemption.

¹ <https://oia.pmc.gov.au/>

This captures the difference between IIOs who essentially act as collectives of farmers, designed to operate in the interest of those farmers, who facilitate trades among members. Compared with brokers who facilitate trade for a fee with the object of commercial gain as an outcome of their service/facilitation. It should be noted that IIOs have existing governance structures, safeguards, and debt recovery mechanisms in place, applying the same regulatory framework risks duplicating protections while imposing unnecessary administration costs on IIOs and trade charges on their member farmers for no added benefit. There is precedent for such exemptions in the Water Charge Rules 2010².

NIC recommends further clarity could be achieved by providing clearer examples of who it applies to and who it does not, or a central list. This request does not mean a register must be created but rather, a clear list in a central location, which businesses can nominate to publicise they adhere to the code. This would improve transparency for market participants, wanting to understand if the intermediary they are interacting with fall under the code of conduct or not.

1.1 General conduct obligations

Further work to outline what matters the regulators may use to allow for the exemption in Obligation 4, may occur would be beneficial.

NIC supports the clarity provided by the addition of obligation 5.

1.2 Conflict of interest

NIC supports the amended conflict of interest provisions and the exemption for IIOs to obligation 2 – prohibition. The additional obligations for IIO provide clarity of expectations of behaviour.

Further clarity of what would constitute a misuse of power etc and recognition of existing obligations to other regulations and laws, like the Corporations Act would be beneficial.

1.3 Information that must be provided to clients before services are provided

The provision of obligations are important, provided they are clear and simple to understand. The extensive list of information to be communicated may be problematic, particularly when it needs to be sent every 12-months. This puts a risk the value of the information, which is disregarded.

NIC suggests that this requirement should be redrafted to ensure that this information is publicly accessible, and that links are available for clients in emails and correspondence.

It should also be noted, when the information is changed, all clients should be notified.

1.4 Client instructions for buy sell offers etc

Whilst we appreciate the need for improved documentation, the pace at which manually facilitated water trade occur will make these obligations challenging. Flexibility should be considered about the point at which documentation of the formal, verbally accepted offer may occur and need documenting and reporting to the clients involved.

This should clearly be outlined in the information to be provided before services are provided, the point at which documentation occurs if verbal versus through other means.

1.5 Complaints handling process

² Section 92 of the Water Act, ie Part 6 and Part 7 operators.



NIC is interested to understand:

1. what happens if a complaint is not resolved satisfactorily to either party, what are the next steps available to either a client or an intermediary to seek a resolution, if there is no independent resolution required?
2. Is this requirement, in addition to or does it over-rule the complaints handling process IIOs already have under the Water Market Rules 2009 that are specific to IIOs?

1.6 Authority to submit trades for approval

No comment.

1.7 Authority to act as an agent

The standard time should be considered 36 months with the addition of an exemption, that allows the parties to mutually agree to another time-frame. For example, existing engagements in place may be for 5-year terms to align with lease periods and these should be honoured.

1.8 Broking water account obligations

No comment.

1.9 Professional indemnity insurance

Consideration of a reduced Professional Indemnity insurance level should be considered for intermediaries that do not facilitate large volumes of trades, in terms of water and/or monetary value, to reduce the regulatory burden and ensure proportionate insurance protection. This aims to provide a proportionate level of insurance to the size, scale and risk.

The current proposal disproportionately burdens smaller trade value operators, including IIOs. Creating significant transaction cost barriers for smaller entities. This would have unintended consequences by reducing competition or removing trading options for smaller parcels of water.

NIC recommends proportional insurance requirements and consideration of the existing precedent in the Water Charge Rules (under Section 92 of the Water Act) for distinguishing different types of IIOs, such as Part 6 and Part 7 operators, could be used to set tiered insurance requirements. This would ensure that smaller operators and IIOs providing essential services to their members are not unfairly disadvantaged by disproportionate regulatory burdens.

1.10 Record keeping

NIC is concerned there is likely duplication between the record keeping requirements of the Code and the water market information obligation for data providers, where there is cross-over (for example IIO who also provide intermediary services).

Therefore, we consider a need for an exemption for intermediaries who are also responsible to report this data to the BOM (likely data under obligation 1). Acknowledging that the BOM will be the holder of these records.

1.11 Client ledger accounts for statutory trust accounting

No comment.

2.1 Designation of trust accounts



No comment.

2.2 Approved form for trust account statements and audit reports

No comment.

2.3 Information and matters for trust account statements

No comment.

2.4 Information and matters for trust account audit reports

No comment.

2.5 Eligibility requirements for persons preparing trust account audit reports

No comment.

We thank you for the opportunity to provide this additional feedback and would welcome the opportunity to meet and discuss solutions to these issues with you.

Please feel free to contact Zara and thank you for your attention to this matter.



Mrs Zara Lowien
Chief Executive Officer
National Irrigators' Council

